

Appl No. 09/812,709
Amdt. dated June 30, 2006
Reply to Office Action of April 4, 2006

Atty. Ref. 81747.0192
Customer No. 26021

Remarks/Arguments

Reconsideration of this application is requested. A request for continued examination (RCE) is enclosed in response to the final Office Action mailed on April 4, 2006.

Claim Status

Claims 1-20 are pending. Claims 1 and 7-9 are amended.

Claim Rejections – 35 USC 112

Claims 7 and 8 are rejected under 35 USC 112, second paragraph, as omitting essential steps. In particular, the method steps set forth in these dependent claims are labeled (e) and (f), but the steps in the preceding claims are not labeled (a)-(d). In response, claims 7 and 8 are amended to delete "(e)" and "(f)".

Claim Rejections – 35 USC 103

Claims 1-3, 7, 9-13, 16 and 18-20 are rejected under 35 USC 103(a) as obvious over Van Luchene (US 6,223,163) in view of Stein (US 5,459,305). Claims 4-6, 14 and 15 are also rejected as obvious over Van Luchene in view of Stein, with reference also to Coutts (US 6,311,165). Claims 8 and 17 are rejected as obvious over Van Luchene in view of Stein and Mold (US 5,978,772).

Van Luchene is directed to a POS terminal providing a plurality of offers to customers. With regard to the limitation "in the event selection input waiting time elapses, and there is no selection by the customer, the selection control device can function to select the additional information from a list of items of the additional information", as recited in independent claims 1 and 9, the Action cites col. 6, line 65 to col. 7, line 22 of Van Luchene. In this passage, Van Luchene discloses providing offers to customers and using POS terminal 10 or server 42 to calculate the performance rate of each offer. The performance rate may be based on acceptance rate.

There is clearly no disclosure in this passage of Van Luchene that, where there is no customer selection (i.e. no acceptance of an offer), the selection control device selects additional information from a list of items of the additional

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information. However, because the claim limitation at issue is worded "...the selection control device can function to select the additional information...", the Action asserts that Van Luchene provides the requisite disclosure since its system is not prevented from operating in this manner, and therefore it "can" operate. In support of this position, the Action cites the American Heritage College dictionary definition of "can" as meaning physical or mental ability.

Applicant disagrees with this logic, since there is no disclosure or suggestion that the system of Van Luchene would ever have the ability to function in the manner claimed by applicant. Nevertheless, claims 1 and 9 are amended to clearly overcome this interpretation of Van Luchene:

...the selection control device *selects* the additional information...

By this amendment, the phrase is positively recited, and there can therefore be no rejection based on a hypothetical ability of Van Luchene's system. Stein, Counts and Mold do not provide any relevant teachings with regard to this claim limitation. Therefore, independent claims 1 and 9, and all claims depending therefrom, are now in condition for allowance.

Conclusion

This application is now believed to be in condition for allowance. The examiner is invited to telephone the undersigned to resolve any issues that remain after entry of this amendment.


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Any fees due with this response may be charged to our Deposit Account No.
50-1314.

Respectfully submitted,
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Date: June 30, 2006

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